IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FILED
JAN 2 3 2004
CLERK, U.S. DISTRICT COURT
By ______ Deputy

WESTWAYS WORLD TRAVEL, AND SUNDANCE TRAVEL SERVICE, individually and on behalf of all others similarly situated, Plaintiffs, v. AMR CORPORATION, AMERICAN AIRLINES, INC., AMERICAN EAGLE HOLDING CORPORATION, AIRLINES REPORTING CORPORATION, AIRLINES REPORTING CORPORATION, and SABRE INC., Defendants.	CIVIL ACTION NO. MISC-03-________ 3-04MC 00 7N Case Number ED CV 99-396-RT Central District of California Eastern Division

BRIEF IN SUPPORT OF MOTION TO QUASH DEPOSITION SUBPOENA OF MR. ROBERT L. CRANDALL

Robert L. Crandall, by and through the undersigned counsel, respectfully submits this Motion to Quash with regard to the Northern District of Texas subpoena of Mr. Crandall issued by plaintiffs on December 15, 2003, and would respectfully show the Court the following:

I.
INTRODUCTION

Based upon his apex status and his lack of relevant knowledge, Robert Crandall, a resident of Texas and a non-party to plaintiffs' California action, respectfully submits this memorandum in support of his motion for an order quashing plaintiffs' subpoena and prohibiting them from taking his deposition. Fed. R. Civ. P. 26(a) and 45(c)(3)(A). Plaintiffs Westways World Travel and Sundance Travel Services have filed a lawsuit in the United States District Court for the Central

District of California, CV 99-386-RT (the "California Action"), challenging American Airlines, Inc.'s, ("American"), ability to issue invoices to travel agents who sold improperly discounted tickets in violation of three of American's ticketing rules, as set forth in its conditions of carriage, tariffs, ticketing rules, and other contracts and instructions.[1]

Plaintiffs have recently served a deposition subpoena from this Court on Mr. Crandall, who from 1985 to 1998 served as the CEO, Chairman, and President of American and AMR Corporation.[2] Today, Mr. Crandall maintains positions on the board of directors for Anixter International, Inc., the Halliburton Company, i2 Technologies, and AirCell Inc. and serves as a member of the executive committee of the Aviation Safety Alliance and on the Federal Aviation Administration Management Advisory Counsel. Furthermore, and not surprisingly, even though Mr. Crandall sat at the apex of AMR Corporation and American, he lacks any unique knowledge of the decisions and conduct relevant to the California Action. Despite numerous requests, plaintiffs have not articulated any specific need to depose him, especially when other individuals, including current American employees with actual knowledge of the facts, are and have been made available. Consequently, Mr. Crandall respectfully requests this Court enter an order quashing the deposition subpoena.

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[1] Plaintiffs' lawsuit only challenges three abusive ticketing practices that American seeks to prevent and recover losses from: (1) hidden-city ticketing – where a travel agent sells a ticket to a city other than the one the passenger really intends to travel; (2) back-to-back ticketing – where the travel agent sells tickets so that it appears the passenger is staying over a Saturday night; these are usually two round-trip tickets that are flown out of order so that the passenger can travel as if he or she purchased an unrestricted coach airfare, while getting a lower fare; and (3) roundtrip tickets used for one-way travel – where the travel agent, to help the passenger avoid paying a higher one-way price, sells a roundtrip ticket even though the passenger only flies one leg of the trip. Each of these fraudulent ticketing practices, in essence, allows for an improper discount and deprives American of its rightful revenue.

[2] AMR Corporation is the holding company for American Airlines, Inc. and does not conduct any independent airline operations.

II.
STATEMENT OF FACTS

Under the guise of RICO and several state-law claims, plaintiffs seek to overrule a contractual and federal regulatory scheme that allows American to (1) establish and enforce its ticketing fares; (2) prevent the sale of improperly discounted tickets; and (3) recover its losses when travel agencies violate its fare rules. American loses millions of dollars each year from travel agents' fraudulent and/or impermissible ticketing practices that result in improper discounts given by travel agents. American bills travel agents for selling improperly discounted tickets, seeking to recover the difference between the amount the travel agent actually collected from the passenger and the amount it should have collected for the transaction.[3] In the California Action, plaintiffs claim such acts constitute criminal extortion and mail fraud under RICO, as well as breach of contract and unjust enrichment.

On December 5, 2003, plaintiffs sent a letter indicating their intent to depose Mr. Crandall, but did not explain their need to depose him.[4] (Declaration of Robert P. Berry ("Berry Decl.") ¶ 7; Appendix to Brief in Support of Robert L. Crandall's Motion to Quash Subpoena ("Appendix") at 7). American's and Mr. Crandall's counsel promptly responded, explaining that his deposition would impose an undue burden because of his apex status and because he had no unique knowledge

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3 The travel industry commonly refers to these invoices as "debit memos."

4 On that same date, plaintiffs served notices for two other "apex" depositions (Mr. Dan Garton, Executive Vice President of Marketing, and Mr. Monty Ford, Senior Vice President of Information Technology and Chief Information Officer). (Berry Decl. ¶ 8; Appendix at 7.) Plaintiffs also indicated their intent to subpoena Mr. Don Carty, another former American CEO, Chairman, and President, and Mr. Michael Gunn, a former Executive Vice-President of American. (Berry Decl. ¶ 7; Appendix at 7.) These issues are not presently before this court. Plaintiffs have only sought to depose five other individuals in the California Action: Julie Lindemuth, who testified in an individual capacity and as an American 30(b)(6) witness; Mr. Frank Morogiello, who is the Managing Director for Agency Sales; Mr. Charles MarLett, AMR Corporation's and American's Corporate Secretary; Mr. Christopher Dane, a former American employee; and Mr.

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of issues. (Berry Decl. ¶ 9; Appendix at 7.) Counsel also asked plaintiffs to articulate their specific need for his deposition in order to potentially offer an alternative witness with knowledge on the issues. (Berry Decl. ¶ 14; Appendix at 8.)

Plaintiffs initially considered deferring Mr. Crandall's deposition until after they sought information from other witnesses. (Berry Decl. ¶ 16; Appendix at 8.) Before the parties formally agreed to defer the issue, however, plaintiffs rejected the idea outright. (Berry Decl. ¶ 22; Appendix at 9.) On January 9, 2004, plaintiffs stated that they intended to go forward with Mr. Crandall's deposition without pursuing less burdensome sources first. (January 9, 2004 email from Farley Neuman, attached as Exhibit L to the Berry Decl.; Appendix at 41.)

Despite repeated requests, plaintiffs have never explained what relevant information they would seek from Mr. Crandall. Rather, they have only stated that (1) he was an officer of American; (2) he served on the board of "Sabre";[5] and (3) his name was mentioned in one of more than 13,000 documents produced in this case. (December 12, 2003 email from Farley Neuman, attached as Exhibit E to the Berry Decl.; Appendix at 26). Devoid of any support, plaintiffs only other statement is that somehow "Mr. Crandall's deposition is important to our case." (Berry Decl. at Ex. L; Appendix at 41.) Nothing is further from reality. Mr. Crandall lacks unique or superior knowledge of facts relevant to the California Action, his apex status makes this deposition harassing and inappropriate, and the subpoena should be quashed.

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Craig Kreeger, the former Vice President of Sales and now American's Vice President of Europe and Asia. (Berry Decl. ¶¶ 3-6; Appendix at 6-7.)

[5] Plaintiffs loosely refer to "Sabre" without clearly identifying the specific entity they are referring to. Sabre Inc. is the named defendant in the California Action, but it did not exist in its present form until after Mr. Crandall's retirement from AMR Corporation and American.

III.
CONTROLLING LAW OFFERS STRONG PROTECTION TO PREVENT THE HARASSMENT OF APEX WITNESSES

The Federal Rules of Civil Procedure provide the Court with authority to intervene "to protect a party from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c); 45(c). Rule 45 requires a court to "quash or modify [a] subpoena if it . . . subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv). Courts accord non-parties, like Mr. Crandall, special protections from potential discovery abuses. *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 49 (S.D.N.Y. 1996). The tactic of pursuing the deposition of the former CEO, Chairman, and President of American and AMR – despite the fact that he lacks relevant and unique knowledge – falls well within the abuses warranting protection under the Federal Rules.

Similarly, Rule 26 provides that the Court may limit discovery that "is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient [or] less burdensome." Fed. R. Civ. P. 26(b)(2)(i). Deposing a non-party who was a high-ranking corporate official without any indication that he has superior or unique personal knowledge of the information involved or that the information could not be obtained from a less burdensome source is oppressive, inconvenient, and burdensome. *See Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 334-35 (M.D. Ala. 1991).

Numerous federal appellate and district courts, including those in the Fifth Circuit, have strongly embraced these concerns, explaining that such depositions present a significant possibility of abuse and harassment. *See, e.g., Salter v. Upjohn Co.*, 593 F.2d 649, 652 (5th Cir. 1979) (upholding district court's decision to quash the deposition notice of defendant's corporate president where it was likely that other employees had more knowledge and the president asserted he did not have knowledge of the facts); *Thomas v. IBM*, 48 F.3d 478, 487 (10th Cir. 1995) (upholding district court's protective order vacating plaintiffs' notice to depose IBM's chairman of the board);

Lewelling v. Farmers Ins. of Columbus, Inc., 879 F.2d 212, 218 (6th Cir. 1989) (preventing plaintiffs from deposing CEO who lacked knowledge of relevant information); *Baine*, 141 F.R.D. 332; *Cardenas v. Prudential Ins. Co. of Am.*, 2003 U.S. Dist. LEXIS 9510, at *2 (D. Minn. May 16, 2003) ("[C]ourts frequently restrict efforts to depose senior executives where the party seeking the deposition can obtain the same information through a less intrusive means, or where the party has not established that the executive has some unique knowledge pertinent to the issues in the case."); *see also Crown Cent. Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 128 (Tex. 1995) ("As virtually every court which has addressed the subject has observed, the depositions of persons in the upper level management of corporations often involved in lawsuits present problems which should reasonably be accommodated in the discovery process."); *Liberty Mut. Ins. Co. v. Super. Ct.*, 10 Cal. App. 4th 1282, 1288 (1992) ("[F]ederal decisions recognize the potential for abuse and generally do not allow a plaintiff's deposition power to automatically reach the pinnacle of the corporate structure.").

In *Baine v. General Motors Corp.*, plaintiff sought to depose a vice president who had written a memorandum describing his observations on a vehicle restraint system, which allegedly was defective and caused the plaintiffs' injuries. 141 F.R.D. 332. Plaintiffs also sought to depose the 18 recipients of the memo. In considering the propriety of deposing a high-level corporate officer, the Court noted that such tactics could result in unwarranted harassment, burden, and abuse. Citing numerous cases, the court determined that the officer's deposition should be stayed until plaintiff first established that the officer possessed unique personal knowledge of the matter at hand:

> [W]hen a party seeks to depose high-level decisionmakers who are removed from the daily subjects of the litigation, the party must first demonstrate that the would-be deponent has 'unique personal knowledge' of the matter in issue.

Id. at 334. Moreover, a high-ranking executive should not be deposed "if he could contribute nothing new to the information provided by the alternative deponents." *Id.*

Similarly in *Hughes v. General Motors Corp.*, the Court refused to allow the plaintiff to depose the president of General Motors stating:

> No good cause exists to require defendant to submit its president for a deposition when it is clear that the information plaintiff wants is available through other employees of defendant, and such employees have been questioned or on plaintiff's request can be questioned. The request borders on harassment and would at best result in a duplication of testimony.

18 Fed. R. Serv. 2d 1249-50 (S.D.N.Y. 1974).[6]

IV.
NOTHING SUPPORTS PLAINTIFFS' CLAIM THAT MR. CRANDALL COULD GIVE IMPORTANT OR UNIQUE TESTIMONY IN THEIR CASE

Plaintiffs have not and cannot point to any superior or unique personal knowledge Mr. Crandall possesses relevant to their claims in the California Action. In fact, plaintiffs have repeatedly refused to identify the issue(s) upon which they seek to depose Mr. Crandall and assert their right to depose him solely based upon his status as an American officer, the fact that his name was "mentioned" in a deposition, and the fact that his name appeared on a few documents.

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[6] *See also Mulvey v. Chrysler Corp.*, 106 F.R.D. 364, 366 (D.R.I. 1985) (precluding deposition of Lee Iacocca because he had no knowledge relating specifically to plaintiff); *Community Fed. Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd.*, 96 F.R.D. 619, 621 (D.D.C. 1983) (granting protective order barring depositions of two corporate board members because, among other things, plaintiffs had not shown that they had "any unique or personal knowledge"); *Mader v. Motorola, Inc.*, 1994 WL 535125, at *3 (N.D. Ill. Sept. 30, 1994) (issuing protective order where plaintiff failed to establish CEO had relevant information); *Broadband Communications Inc. v. HBO*, 549 N.Y.S.2d 402 (1990) (issuing "protective order to prevent harassment of a particular corporate officer" who had no first-hand knowledge of the relevant facts.); *Colonial Capital Co. v. Gen. Motors Corp.*, 29 F.R.D. 514, 518 (D. Conn. 1961) (issuing protective order prohibiting deposition of CEO who had no knowledge of the matters in the action); *Liberty Mut. Ins. Co. v. Super. Ct.*, 10 Cal. App. 4th at 1288-89 (requiring plaintiff to show "good cause that the official has unique or superior personal knowledge of discoverable information"); *M.A. Porazzi Co. v. Mormaclark*, 16 F.R.D. 383, 384 (S.D.N.Y. 1951) (vacating notice of deposition of company's vice-president where he could not provide any unique knowledge).

But none of the deposition testimony indicates that Mr. Crandall's personal knowledge of issues relevant to the California Action. Chris Dane's deposition confirms as much – and in fact shows that Mr. Crandall was not involved:[7]

> Q: Do you have a recollection of ever participating in any meeting of staff at American Airlines where Mr. Crandall was in attendance?
> A: Yes.
> Q: At any of those meetings, do you recall there being any discussion regarding back-to back ticketing, hidden city ticketing or throw-away ticketing?
> A: No.

(Deposition of Christopher Dane ("Dane Depo.") at 126:10-18, attached as Exhibit B to the Berry Decl.; Appendix at 20.)

Mr. Dane further testified that Mr. Crandall would not be involved with disputes with travel agents over debit memos, which is the basis of the California Action. *Id.* (Dane Dep. at 167:12-13; Appendix at 21). Furthermore, Charles MarLett, AMR Corporation' and American's Corporate Secretary, testified that the policies concerning fare violations, including the three at issue in the California Action, were never discussed or decided at any board of directors meeting of AMR Corporation or American. (Deposition of Charles MarLett at 38:15-40; 55:8-24; 62:2-12; 64:17-21, attached as Exhibit A to the Berry Decl.; Appendix at 12-15.) In short, these routine billing issues were not a matter addressed at the apex of either company, nor should they have been.

Mr. Crandall's attached affidavit corroborates the testimony of Messrs. Dane and MarLett. Mr. Crandall had no personal knowledge or involvement with any of the invoices at issue in the California Action. (Declaration of Robert L. Crandall in Support of Motion to Quash ("Crandall Decl.") ¶ 6; Appendix at 4.) He also has no personal knowledge of American's decisions related to American's policies for issuing invoices to travel agents for the three ticketing violations at issue in

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[7] During the relevant time period, Mr. Dane served as American's Managing Director of Travel Agency Sales Programs. (Dane Dep. 16:18-20). Dane testified at length about American's
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the California Action, nor did he approve any of these policies. (Crandall Decl. ¶¶ 6, 8; Appendix at 4.) As a result, his deposition would do nothing to further the litigation in California. In the absence of a reasonable belief that he has some knowledge of the facts upon which his testimony is to be taken – let alone unique or superior knowledge – there is no reason that he should be forced to appear. *Armstrong Cork Co. v. Niagara Mohawk Power Corp.*, 16 F.R.D. 389, 390 (S.D.N.Y. 1954); *Baine*, 141 F.R.D. at 335.

Plaintiffs' counsel has also stated that Mr. Crandall "received" one particular memo, which according to them suggests he may have some knowledge of relevant issues.[8] But the document hardly provides a basis for taking Mr. Crandall's deposition. Mr. Crandall's name appears on a handful of more than the 13,000 documents that have been copied for production (and hundreds of thousands of documents that American has made available to the plaintiffs for inspection). The document plaintiffs reference was written by a current American employee, Mr. Craig Kreeger, who American offered for deposition within the discovery period. (Berry Decl. ¶¶ 8, 20; Appendix at 7, 9.) In light of Mr. Kreeger's allowed deposition, plaintiffs cannot reasonably demonstrate that Mr. Crandall could contribute any unique information.[9] *Baine*, 141 F.R.D. at 334 (refusing to

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polices and concerns relating to the three ticketing violations at issue in the California Action.

[8] Plaintiffs' counsel's e-mail states that Mr. Crandall received an "important memo, Exhibit 532 to Mr. Dane's deposition." While, counsel's representation that the memo has any importance to the California Action is completely unfounded, Exhibit 532 does not mention Mr. Crandall's name. (Exhibit 532 to Dane Depo., attached as Exhibit G to the Berry Decl.; Appendix at 27-28.) Plaintiffs may have intended to reference Exhibit 534, but as explained above, this document is insufficient to establish Mr. Crandall's knowledge and compel his testimony. (*See* Exhibit 534 to Dane Depo. ("Exhibit 534"), attached as Exhibit G to the Berry Decl.; Appendix at 29.)

[9] Exhibit 534, assuming it is the document plaintiffs meant to reference, summarizes American's efforts to minimize ticketing abuses generally. (Exhibit 534; Appendix at 29.) While it describes American's attempts to reduce losses from two types of ticketing violations and American's procedures once those violation occurs, the high-level summary in the memo actually confirms Mr. Crandall's general lack of knowledge of American's policies and procedures in this area. Otherwise, the memo would not need to provide such a rudimentary summary. Plaintiffs will
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permit deposition if the high-level corporate officer "could contribute nothing new to the information provided by the alternative deponents."). Countless other witnesses with knowledge were disclosed to plaintiffs through prior depositions; plaintiffs, however, chose to ignore them.

Furthermore, there is no evidence Mr. Crandall would possess any more knowledge than that which is within the document itself. Nor is there evidence that he responded to the memo with any questions, analysis, or directions. At most he wrote the word "good" and returned it to the author. (Exhibit 534 to Dane Depo., attached as Exhibit G to the Berry Decl.; Appendix at 29.) This is normal behavior for apex officers; the appearance of his name on the document does not come close to indicating any unique knowledge and is insufficient to compel his deposition. *See Baine*, 141 F.R.D. at 334 (prohibiting deposition of high-level corporate officer based on the fact he wrote a memo and requiring plaintiffs to seek information from lower-level employees); *Liberty Mut. Ins., Co.*, 10 Cal. App. 4th at 1288-89 (receipt of correspondence inadequate to demonstrate sufficient knowledge to compel "apex" deposition).

Nor can plaintiffs show that they exhausted (or even tried to exhaust) less intrusive discovery methods. Other than attempting to depose five high-level current or former corporate officials, plaintiffs have only sought to depose five other witnesses who were either present or former American employees. (Berry Decl. ¶¶ 3-8; Appendix at 6-7.) It is improper for plaintiffs to attempt to take Mr. Crandall's deposition without deposing American employees with more knowledge of the subject matters they seek to discover. *See, e.g.*, *Salter*, 593 F.2d at 651; *Mulvey v. Chrysler Corp.*, 106 F.R.D. at 366; *Hughes*, 18 Fed. R. Serv. 2d 1249; *see also supra* n.5. American has cooperated with plaintiffs to provide alternate deponents when plaintiffs pursued the

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no doubt seize on the phrase "based on your concerns in a recent staff meeting," but those concerns may have nothing to do with these particular ticketing violations. Nor were plaintiffs without the
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depositions of other noticed apex executives. (Berry Decl. ¶ 15; Appendix at 8.) As for Mr. Crandall's deposition, plaintiffs not only refused an alternative deponent, they have failed to even state what information they would seek from him. (Berry Decl. ¶¶ 14, 23; Appendix at 8, 9.)[10]

V.
MR. CRANDALL IS UNIQUELY SUBJECT TO DISCOVERY HARASSMENT

Although Mr. Crandall is no longer the Chairman, CEO, or President of American or AMR Corporation, long-standing policy to protect witnesses from harassment and undue burden supports applying the apex deposition doctrine. *See Cantor v. Equitable Life Assurance Soc'y*, 1998 U.S. Dist. LEXIS 13240, at *5-7 (E.D. Pa. Aug. 26, 1998) (applying apex doctrine to prevent deposition of former CEO). Courts utilize the apex deposition doctrine to prevent parties from harassment or coercion created by "leap frogging" to the top of the corporation, thereby subjecting unique individuals to harassment. *See, e.g., Mulvey*, 106 F.R.D. at 366; *Liberty Mut. Ins.*, 10 Cal. App. 4th at 1287-88.

This is a particular problem for Mr. Crandall. Not only is he the former President, CEO, and Chairman of American and AMR Corporation, he currently serves as a director on the board of multiple, large, publicly-traded companies, including Anixter International, Inc., the Halliburton Company, i2 Technologies, Inc., Celestion, Inc. and AirCell, Inc. (Crandall Decl. ¶ 9; Appendix at 5.) He was appointed to the executive committee of the Aviation Safety Alliance and the Federal Aviation Administration Management Advisory Council, and he was recently nominated to

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ability to discover Mr. Kreeger's meaning – they could have asked him during his deposition, but they chose not to show up on the agreed upon date for the deposition.

[10] If this Motion is denied, plaintiffs should be required to proceed by written deposition or the deposition should be limited in both time and scope. *See Folwell v. Sanchez Hernandez*, 210 F.R.D. 169, 175 (M.D. N.C. 2002) (preapproving deposition topics to ensure relevance and enforcing time limit on deposition).

serve as part of President George W. Bush's administration as a Member of the Amtrak Reform Board. (Crandall Decl. ¶ 9; Appendix at 5.) Therefore – despite his "former" CEO, Chairman and President status – Mr. Crandall remains a "singularly unique and important individual who can be easily subjected to unwarranted harassment and abuse." *See Mulvey*, 106 F.R.D. at 366. Such an individual has a right to be protected from harassment and abuse, and courts have a duty to recognize his vulnerability, especially while nothing indicates his testimony would uniquely advance the case. *Id.*

In fact, Mr. Crandall's non-party status provides an additional justification to protect him from this harassment. Courts consistently recognize a greater need to protect non-parties from harassment during the discovery process. *See, e.g., Concord Boat,* 169 F.R.D. at 49 ("[T]he status of a witness as a non-party to the underlying litigation entitles [the witness] to consideration regarding . . . inconvenience" arising from a subpoena) (quotation omitted); *Katz v. Batavia Marine & Sporting Supplies, Inc.*, 984 F.2d 422, 424 (Fed. Cir. 1993) (nonparty status should be considered in weighing the burdens imposed by the requested discovery). Here, not only can plaintiffs obtain information from less burdensome sources – they can seek the information directly from the named defendant.

Attempting to harass Mr. Crandall (and American) by subjecting him to an unnecessary and burdensome deposition is not a new litigation tactic. Courts have rejected it as improper in the past, and it should not be condoned here. For example, in *AMR Corp. v. Enlow*, the plaintiff sued AMR Corporation and American alleging dramshop negligence when American allegedly served alcohol to one of its passengers. 926 S.W.2d 640 (Tex. 1996). Plaintiffs sought to depose Mr. Crandall, and he sought a protective order. Although the trial court denied the protective order, the Court of Appeal reversed on a writ of mandamus.

In *Enlow*, like here, Mr. Crandall presented an affidavit stating that he did not have unique knowledge of the events and American's challenged policies. Like here, Mr. Crandall stated that his only relationship to the relevant policies was his supervisory role as President, CEO, and Chairman of the Board. *Id.* at 643. In *Enlow*, the plaintiffs attempted to overcome Mr. Crandall's affidavit by arguing that they wished to depose him "in order to determine where the authority lies within the organization for making those [alcohol service and flight attendant training] policy decisions so that Plaintiffs can understand how and why those policy decisions were made and what precisely the policies in place were." *Id.* Plaintiffs based their need to depose Mr. Crandall on the deposition testimony of two lower-level employees that allegedly indicated Mr. Crandall had the relevant authority and knowledge of the alcohol service policies. *Id.*

The Court of Appeal, however, rejected plaintiffs' arguments. While acknowledging that Mr. Crandall might have ultimate authority, or that the "buck" probably stopped with him, these statements were insufficient to establish that he possessed unique or superior knowledge. "This testimony amounts to nothing more than the simple, obvious recognition that the highest-ranking corporate officer of any corporation has the ultimate responsibility for all corporate decisions." *Id.* at 644.

The situation here is no different. Plaintiffs have not identified any relevant information Mr. Crandall might possess. Nor does the deposition testimony or any of the documents indicate anything more than Mr. Crandall had "ultimate responsibility for all corporate decisions." Consistent with his affidavit, there is no evidence that he was actually involved in any discussions or meetings concerning the travel agent invoices or ticketing policies at issue in the California Action. (Crandall Decl. ¶¶ 6-8; Appendix at 4-5; *see* Dane Depo. at 126:10-18; Appendix at 20). Thus, there is no legitimate purpose that plaintiffs hope to achieve by seeking his deposition.

"The court should be alert to see that the liberal deposition procedure provided in the Federal Rules is used only for the purpose for which it is intended and is not used as a litigation tactic to harass the other side or cause it wasteful expense." *Armstrong Cork Co.*, 16 F.R.D. at 390-91. The only objective that plaintiffs can hope to achieve from deposing Mr. Crandall, while not deposing individuals with superior knowledge of the facts relevant to this action – including those who are American employees – is to cause Mr. Crandall and American undue burden, unnecessary expense, and unacceptable harassment. These objectives have no proper place in discovery.

VI.
CONCLUSION

For the foregoing reasons, Mr. Crandall respectfully requests that this Court quash the deposition subpoena.

DATE: January 23, 2004

Respectfully submitted,

By: ______________________

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served upon opposing counsel by certified mail, return receipt requested, on this 23rd day of January 2004, as follows.

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